

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	.	Criminal No. 1:04cr385
	.	
	.	
vs.	.	Alexandria, Virginia
	.	February 19, 2009
ALI AL-TIMIMI,	.	11:05 a.m.
	.	
Defendant.	.	
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. . . . .	.	

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE LEONIE M. BRINKEMA  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:	GORDON D. KROMBERG, AUSA United States Attorney's Office 2100 Jamieson Avenue Alexandria, VA 22314 and JOHN T. GIBBS, ESQ. Counterterrorism Section United States Department of Justice 601 D Street, N.W. Washington, D.C. 20004
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FOR THE DEFENDANT:	JONATHAN TURLEY, ESQ. The George Washington University Law School 2000 H Street, N.W. Washington, D.C. 20052 and WILLIAM E. OLSON, ESQ. Bryan Cave LLP 700 13th Street, N.W. Washington, D.C. 20005-3960
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(Pages 1 - 7)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1     APPEARANCES:     (Cont'd.)

2     ALSO PRESENT:                     LISA TURNER, ESQ.  
3   SA JOHN WYMAN

4     COURT SECURITY OFFICERS:         CHRISTINE GUNNING  
5   DAN HARTENSTINE

6     OFFICIAL COURT REPORTER:        ANNELIESE J. THOMSON, RDR, CRR  
7   U.S. District Court, Fifth Floor  
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10                                        (703)299-8595

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1 P R O C E E D I N G S

2 (Defendant present.)

3 THE CLERK: Criminal Case 04-385, United States of  
4 America v. Ali Al-Timimi. Would counsel please note their  
5 appearances for the record.

6 MR. KROMBERG: Good morning, Your Honor. Gordon  
7 Kromberg and John Gibbs for the United States. With me at  
8 counsel -- with us at counsel table is Lisa Turner from NSA,  
9 and also on this side of the bar is Special Agent John Wyman  
10 from the FBI.

11 THE COURT: All right, good morning.

12 MR. TURLEY: Good morning, Your Honor. Jonathan  
13 Turley for Dr. Ali Al-Timimi. With me is Mr. Will Olson from  
14 the law firm of Bryan Cave.

15 THE COURT: All right. We're going to begin this  
16 matter as an open hearing, and then we will have to go to our  
17 sealed session in a few minutes.

18 One preliminary matter: Mr. Turley, the Clerk's  
19 Office has sent up to me a federal bond provided by Seneca  
20 Insurance Company. This was in the original case. It was in  
21 the amount of \$75,000. I don't believe there's any further  
22 need for the bond, and before we ever destroy bonds, we always  
23 check with counsel of record.

24 I'm going to have my law clerk show this to you. If  
25 there's no objection from the defense, we will go ahead and

1 just destroy this, or we can return it, but we need to know  
2 what you want to do with it. As I recall, Dr. Timimi was on  
3 bond during the pendency of the trial.

4 MR. KROMBERG: That's correct. And he was ordered to  
5 surrender after sentencing, Judge.

6 THE COURT: Right. And so in my view, the bond has  
7 been fully satisfied.

8 Do you agree with that, Mr. Turley?

9 MR. TURLEY: That's my understanding, Your Honor.

10 THE COURT: All right. Then if you'll just return it  
11 to us, then the Clerk's Office as part of their -- Mr. Wood, if  
12 you'd get that? -- as part of their practice will just go ahead  
13 and destroy the bond. All right, we've taken care of that.

14 Now, the other housekeeping matter that I want to put  
15 on the record, and this can be done publicly, as I've said to  
16 the government several times before, I am not going to function  
17 with my hands tied behind my back as a federal judge. This  
18 case was brought by the Executive Branch in the Judicial  
19 Branch, and therefore, to a significant degree, the game has to  
20 be played by the rules of the Judicial Branch.

21 I have still not gotten my law clerk who is assigned  
22 to this case cleared to have access to all of the documents to  
23 which the Court has had access. I will not and do not function  
24 that way. That means I cannot have the assistance of my clerk  
25 in drafting any opinions, in having my own in-house person to

1 discuss any legal or other issues. I have been asking the  
2 government for several probably months at this point. She has  
3 a full clearance but is not cleared for the particular issues  
4 involved in this case. Until that is done, this Court is not  
5 going to rule definitively on any of those issues that require  
6 that information be addressed.

7           So I'm letting the government know if they want to  
8 get this matter resolved expeditiously, they need to do  
9 whatever is necessary to get her cleared, and that's all I'm  
10 going to say about that.

11           Mr. Kromberg, you have no control over that, but you  
12 can go up the chain of command on your side of the, of the  
13 podium to get things moving.

14           MR. KROMBERG: That's true, but I would like to put  
15 on the record, Judge, that when the Executive Branch brought  
16 the case, the facts were the facts, and the -- and then when  
17 the defense makes an accusation that something happens that has  
18 no basis in fact, that cannot cause -- that cannot come back on  
19 the government that the Executive Branch's decision was somehow  
20 short-sighted.

21           The decision that was made was based on a set of  
22 facts that Mr. Turley doesn't know them, so it's not to his  
23 discredit that he's making these accusations that things might  
24 have happened, but the existence of the facts, the way they  
25 were was that the Executive Branch made the decision and it

1 was -- there was nothing wrong with it, and I think that the  
2 Court knows that now.

3 THE COURT: Well, the merits of the decision have not  
4 been addressed by this Court yet. What I'm saying is I will  
5 not work and I will not address the final merits of this  
6 issue -- these issues until I have a clerk who is cleared.  
7 There's no reason that she's not cleared, none. We had to  
8 fight to get you cleared, if you remember.

9 So this is ridiculous, and I think with the new  
10 administration, I would expect this will not be so difficult.  
11 I could be wrong on that, but in any case, that's the status of  
12 things, and you need to take that message up to whoever you  
13 need to take it to.

14 MR. KROMBERG: Yes, Your Honor.

15 MR. TURLEY: Your Honor, without addressing any  
16 specifics, I just wanted to object to one aspect of what  
17 Mr. Kromberg said, and that is, we cannot get into this because  
18 we'll be going into the sealed discussion, but it is not true  
19 that allegations that we have made, without getting into what  
20 those allegations are, have been found to be invalid and  
21 without substance, and I think that the representation the  
22 government just made in open court is not supported by the  
23 record in this case.

24 THE COURT: All right. Well, again, we're going  
25 to -- substantive issues are not really before us today.

At this point, unless there are any other nonclassified matters that need to be discussed, I think the safest approach is we're going to have to close the courtroom, and Mr. Timimi and cocounsel will not be present because they're not cleared, and as soon as we have taken care of the courtroom, we'll go back into session. All right, we'll recess court briefly.

(Which were all the proceedings  
had at this time.)

CERTIFICATE OF THE REPORTER

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.

/s/  
Anneliese J. Thomson